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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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THE PEOPLE,

Plaintiff and Respondent,

v.

KENNETH BATES,

Defendant and Appellant.

C073691

(Super. Ct. No. 12F07077)

Early in the morning of October 16, 2012, Sacramento County Sheriff's deputies responded to an incomplete 911 call that a woman's car had been vandalized. The car looked like it had been in a collision and was near a damaged telephone pole. It was registered to defendant Kenneth Bates and his wife. The California Highway Patrol (CHP) was dispatched, and the deputies handed the investigation over to the CHP officers when they arrived.

A CHP officer contacted defendant, who was walking away from the car and toward the officer. Defendant walked unevenly and swayed when he stopped. He could not stand upright and his breath smelled strongly of alcohol.

Defendant told the officer he had been driving the car. He drank a 40-ounce beer that night and hit a telephone pole with his car. He told the officer he had been drinking

too much and should not be driving. The officer arrested defendant after he failed several field sobriety tests and refused to take any more.

Defendant's blood-alcohol level was .24 percent.

Following a jury trial, defendant was convicted of driving under the influence of alcohol with three prior driving under the influence convictions within 10 years and driving with a blood-alcohol level of .08 percent with three prior convictions for driving under the influence within the last 10 years. The trial court placed defendant on five years' formal probation subject to various conditions including one year in county jail with 153 days' credit.

Defendant appeals.

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant. Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

#### DISPOSITION

The judgment is affirmed.

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ROBIE, J.

We concur:

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RAYE, P. J.

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MAURO, J.